IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

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| Application Number | : | 10/593,039 | Confirmation No.: | 5751 |
| Appellant | : | Linda Menrik | | |
| Filed | : | September 30, 2008 | | |
| Title | : | FLOOR CLEANING IMPLEMENT | | |
| TC/Art Unit | : | 3723 | | |
| Examiner: | : | Robert J. Scruggs | | |
| Docket No. | : | 69409.001017 | | |
| Customer No. | : | 21967 | | |

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**REPLY BRIEF**

## INTRODUCTION

The Appellant submits this Reply Brief in response to the Examiner's Answer mailed February 2, 2011.

## I. ARGUMENT

The claims of the application are directed to "sweeper" devices that use "a dust collecting container being adapted to receive, via a dust inlet..., dust particles thrown by the brush arrangement." *See, e.g.,* claim 1.

Parker illustrates two different kinds of cleaning devices. The first, shown in Figures 1 through 17, is a "vacuum cleaner" that uses a vacuum fan assembly 18 to pull dirt into a chamber. *See* Parker at col. 4, l. 40 – col. 5, l. 45. The second, shown in Figures 18-19, is a "sweeper" that does not have a vacuum source and instead relies on a rotating brush 174 to throw dirt into an open dirt chamber. 180. *See* Parker at col. 8, l. 63 – col. 9, l. 8. Notably, the "vacuum cleaner" embodiment is incapable of collecting debris without the vacuum fan assembly operating, because inlet 94 to the dirt cup 80 is closed by a "dirt cup flap 92 which is biased to a closed position over the inlet 94, but which will open into the dirt chamber 90 under the influence of air flowing from the roller brush slot 104 into the dirt cup assembly 54." Parker, col. 5, ll. 36-40. Both versions of Parker have a cloth holder located behind the dirt inlet and brush. Delgado does not show any kind of rotating brush, but does show a suction cleaner that requires a wetted pad to move in advance of the suction source to provide continuous cleaning in one stroke. *See, e.g.,* Delgado at col. 1, ll. 44-48.

The statements provided in the Examiner's Answer regarding the combination of these references raise certain points that require comment.

As an initial point, the Examiner once again fails to overcome the fact that the present

claims are directed to a "sweeper" that uses inertia to throw dirt into a dirt receptacle, rather than a vacuum cleaner that uses moving air to pull the dirt into the receptacle. The rejections are all based on combining Parker's "vacuum cleaner" version with Delgado: "Delgado teaches that it is old and well known in the art to combine a liquid applying mechanism with a vacuum operated cleaning device." Examiner's Answer at 7. The Examiner's reliance on the common feature of a vacuum source is repeated throughout the Examiner's Answer. Even if a vague and broad general motivation exists to combine the Parker "vacuum cleaner" embodiment with Delgado based simply on the fact that both have a vacuum source, no such motivation exists for combining Parker's "sweeper" version with Delgado because the sweeper lacks any kind of vacuum source. Indeed, if the Examiner tried to combine Parker's "sweeper" with Delgado at the outset, the error in the rejection would be perfectly clear (e.g., Delgado so manifestly requires a suction source that modifying it by removing the suction source would render it completely unsuitable for its intended purpose). Perhaps knowing this, the Examiner instead combines the Parker "vacuum cleaner" with Delgado, then seems to shift the rejection to the sweeper once the combination is made. This "backdoor" approach cannot be used to circumvent the clear incompatibility of the Parker "sweeper" and Delgado because it ignores the reasons why the sweeper and Delgado can not be combined in the first place. Furthermore, the Examiner's argument that Parker's "vacuum cleaner" does somehow show "throwing particles into the container" (*see* Examiner's Answer at 7) is completely unsupported by Parker's specification. On this point, the Examiner cites column 5, lines 32-40 of Parker, which does not support the Examiner's argument. This part of Parker actually teaches that the dirt receptacle has a flap 92 that covers the inlet 94 to the cup, and that the flap is only opened by the flow of air generated by the suction source. *See* Parker at col. 5, ll. 32-40. This says nothing about whether the brush

throws dirt into the cup. In fact, looking at Parker's Figure 10, which shows a very small opening 92 into the cup 80, it seems like Parker would not work at all by relying on the brush to throw dirt into the cup.

The Examiner's Answer also includes the curious statement that "[t]he examiner believes that the applicant is interpreting each reference individually rather than interpreting what the primary reference lacks and what special feature the secondary reference teaches." Examiner's Answer at 7. In response to the statement that the Appellant is interpreting each reference individually, the Appellant contends that it has properly interpreted each reference "as a whole" to see both what it teaches for and teaches against. M.P.E.P. § 2141.02(VI) (*citing W.L. Gore & Associates, Inc. v. Garlock, Inc.*, 721 F.2d 1540, 220 U.S.P.Q. 303 (Fed. Cir. 1983), *cert. denied*, 469 U.S. 851 (1984)). Furthermore, the Examiner's statement suggests that the "proper" methodology would be to interpret "what the primary reference lacks" and then see what "special feature the secondary reference teaches." Is the Examiner suggesting that the proper analysis is to see what claim elements the primary reference lacks, and then supplement the primary reference with secondary references that teach the missing element? It should be well-settled that it is not proper to use the claims as a "shopping list" to find teachings in the prior art. The method suggested by the Examiner does not sound like a proper obviousness analysis—rather, it suggests classic hindsight reconstruction of the claimed invention, where an examiner would improperly cull through the art to find what claim features one reference does not teach, then find other references to fill in the gaps. Such an approach appears to be taken in this case, and should be rejected.

Indeed, the fact that hindsight reconstruction was used to reject the claims seems apparent given the highly-problematic alleged motivation to combine the references. The Examiner relies

on Delgado's teaching of a "continuous" cleaning method, but that method relies on the particular structure of Delgado having a suction inlet behind the wetted cloth. That arrangement is incompatible with Parker for two reasons. First, Parker puts the inlet in front of the cloth, which is the opposite of Delgado's required arrangement. Second, Parker's rotating brush would make a mess rather than provide enhanced cleaning. On the latter point, the Examiner's Answer makes particularly unconvincing arguments. First, the Examiner says that "applying a liquid to a cloth will more effectively clean a surface...because the liquid will help in breaking down the material." Examiner's Answer at 8. This once again ignores the fact that the now-wet dirt (i.e., mud) will be slung around by Parker's rotating brush, which will make a mess. Second, the Examiner tries to sweep the problems with the combination under the rug, so to speak, by claiming that "Parker, may be used without any problems when operating in various directions to pick up material attached to the surface depending on the vacuuming pressure used, the rotation speed of the brush, the type of material being cleaned, the type of liquid being used, etc." Examiner's Answer at 12. If Parker does not teach a liquid being used in the first place, how does it teach that it can be used with a liquid "without any problems." Creating a slurry of wet dirt and striking it with a rotating brush is a problem that neither Parker nor Delgado anticipates or solves, making the combination completely inappropriate.

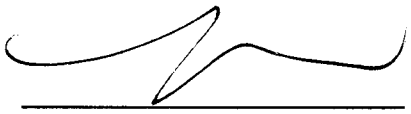
As a final matter, the Examiner takes excessive liberty to reinterpret what the Appellant previously argued where the Examiner's Answer states "[t]his is confusing to the examiner because Delgado, as admitted by the appellants teaches of being used in any orientation." Examiner's Answer at 13-14. Contrary to what the Examiner claims, the Appellants have not "admitted" that Delgado "teaches of being used in any orientation." What the Appellants clearly stated before, and state again now, is that Delgado claims to be able to operate in any orientation,

but doesn't back that claim up with any teaching of how it can do so. Without saying how it can operate in any orientation, Delgado does not "teach" being capable of doing so. As Appellants noted before, the capillary fibers in Delgado would not seem suitable to operate in a horizontal orientation due to expected uncontrolled seepage through the capillaries.

## II. CONCLUSION

In view of the foregoing, the Appellant requests favorable reconsideration and allowance of the claims.

Respectfully submitted,



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